

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5876 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

GUJARAT WATER SUPPLY AND SEWERAGE BOARD

Versus

SUKHABHAI HEMABHAI RATHOD

Appearance:

MR HS MUNSHAW for Petitioner
MR RV DESAI for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 15/12/97

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside award dated November 6, 1993 passed by the learned Presiding Officer,

Labour Court, Godhra, in Reference (L.C.G.) No.211/90 whereby the petitioner is directed to pay 25% of the backwages to the respondent.

2. The respondent was employed as Chokidar since 1983 by the petitioner. He was retrenched from service with effect from August 15, 1987. Therefore, he claimed reinstatement in service with backwages. The Assistant Labour Commissioner, Godhra by an order dated February 5, 1989 referred the dispute for adjudication to learned Presiding Officer, Labour Court, Godhra. The Labour Court on appreciation of evidence, denied the relief of reinstatement to the respondent, as the respondent had attained aged of superannuation, but granted 25% of backwages from August 15, 1987 by award dated November 6, 1992, giving rise to the present petition. The award passed by the Labour Court is produced by the petitioner at Annexure-A.

3. Learned Counsel for the petitioner submitted that during interregnum the petitioner was doing labour work and was earning Rs.15/- a day and, therefore, 25% of backwages should not have been awarded to the respondent. It was pleaded that the respondent was a daily wager and as he is not entitled to gratuity, direction regarding payment of gratuity, if any, according to law, should not have been given to the petitioner.

4. Mr. R.V.Desai, learned Counsel for the respondent submitted that the evidence of respondent does not indicate that right from August 15, 1987 i.e. the date on which services of the respondent were terminated the respondent was earning Rs.15/- per day by doing labour work and, therefore, Labour Court was justified in awarding 25% of backwages to the respondent. It was pleaded that the respondent was in continuous service from 1983 and, therefore, direction given by Labour Court to the petitioner to pay retrenchment compensation as well as gratuity, if payable under the law, cannot be said to be erroneous so as to warrant interference of the Court in the present petition which is filed under Article 226 of the Constitution.

5. As noted earlier, respondent had attained the age of superannuation by the time award was delivered by the Labour Court. Hence, Labour Court rightly did not give any direction to the petitioner to reinstate the respondent in service. It is true that in his deposition it was stated by the respondent that he was earning Rs.15/- a day by doing labour work. However, the evidence does not indicate that he was earning Rs.15/per

day from August 15, 1987 i.e. the date on which his service were terminated by the petitioner. On the facts and in the circumstances of the case, I am of the view that interest of justice would be served if the petitioner is directed to pay an amount of RS.20,000/- to the respondent by way of backwages. The Labour Court has directed the petitioner to give retrenchment compensation as well as gratuity if it is otherwise payable to the respondent under the law. This direction cannot be said to be erroneous in any manner at all. The competent authority of the petitioner will have to decide question as to whether the respondent is entitled to retrenchment compensation and gratuity as per law or not ? If the competent authority comes to the conclusion that the respondent is entitled to the same, the said amount will have to be paid to the respondent.

For the foregoing reasons, the petition partly succeeds. The award dated November 6, 1992 rendered by the learned Presiding Officer, Labour Court, Godhra in Reference (L.C.G.) No.211/90 is modified. It is directed that by way of backwages, the petitioner shall pay an amount of Rs.20,000/- to the respondent as early as possible and preferably on or before January 31, 1998. Rule is made absolute accordingly, with no order as to costs.
